United Nations S/2003/454

Security Council

Distr.: General
25 April 2003

Original: English

Letter dated 21 April 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 November 2002 (S/2002/1284).

The Counter-Terrorism Committee has received the attached third report from the Republic of Croatia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

03-34210 (E) 080503

Annex

Letter dated 27 March 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Croatia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

With reference to your letter dated 15 November 2002, conveying some further questions and comments for the consideration of the Government of Croatia with regard to the implementation of Security Council resolution 1373 (2001), I have the honour to submit additional information to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (see enclosure).

(*Signed*) Zoran **Bošnjak**
Chargé d'affaires a.i.

Enclosure

Third report of Croatia submitted pursuant to Security Council resolution 1373 (2001)

Answers to questions in a letter by the Chairman of the Counter-Terrorism Committee

Implementation measures

1.2 Does the Republic of Croatia by its amendments to the Criminal Code intend to criminalize the collection of funds by nationals of Croatia or in its territory intended to be used in order to carry out terrorist acts? Please provide an outline of the proposed amendments.

Through a Bill of Amendments to the Criminal Code, currently in parliamentary procedure, the Republic of Croatia intends to criminalize or incriminate as criminal acts the procurement of, or preparing means for, removing obstacles to, collection or provision of pecuniary or other financial means, making plans or arrangements with another or taking other action to create conditions for direct performance of criminal acts containing elements of terrorism (anti-state terrorism, international terrorism, hostage taking, hijacking of airplane or ship, endangering the safety of persons under international protection, misuse of nuclear materials, endangering international air traffic and international maritime navigation – criminal acts under articles 170 through 172, 179 and 181).

The content of incrimination in article 169, para. 1 is proposed to be modified, to the effect that the definition of terrorism be changed in relation to the subjective aspect of an offence (guilt), as well as its objective aspect (action); as regards to action, incrimination of the threat to commit a terrorist act is proposed, in conformity with the EU Council Framework Decision of 13 June 2002 on Combating Terrorism, OJ L 164 of 22 June 2002.

After article 187 new articles 187.a and 187.b will be added, reading as follows:

Preparing criminal acts against values protected under international law

Whoever procures or prepares means for, removes obstacles to, collects or provides monetary or other financial means, makes plans or arrangements with another, or takes other action to create conditions for direct performance of criminal acts under articles 156 through 160, 169 through 172, 179 and 181 of this law,

shall be sentenced to imprisonment of one to eight years.

Subsequent assistance to the perpetrator of a criminal act against the values protected under international law

(1) Whoever conceals the perpetrator of a criminal act under articles 156 through 160, 169 through 172, 179 or 181, or provides him with food, clothing, money or takes care of him in another way in order to make his detection or arrest difficult,

shall be sentenced to imprisonment of six months to three years."

The above proposed amendments indicate the intention to tighten the sanctions for criminal acts containing elements of terrorism, which is in conformity with the international conventions and the cited Framework Decision.

Adoption of the amendments to the Criminal Code by the Croatian Parliament is expected in the course of 2003.

The process of ratifying the UN Convention for the Suppression of the Financing of Terrorism is under way. Once ratified and published in the Official Gazette of the Republic of Croatia, this Convention will become part of internal legislation and by its legal force takes precedence over domestic law.

1.3 Please explain whether there are legal or administrative measures in place to ensure that the funds collected by non-profit organizations (e.g., religious, humanitarian or cultural organizations) are not diverted for other than the stated purposes, particularly for financing terrorism. As this requires an appropriate monitoring mechanism, how does Croatia (propose to) ensure that?

When opening an account, foreign non-profit organizations are obliged, in compliance with the Decision on Required Documentation (Official Gazette No. 38/99), to attach a transcript of the Registration Certificate from the Register of Organizations in their country of origin, not older than one month, confirming their legal status, along with a list of signatures of authorized persons.

If it involves a foreign non-profit organization with a registered branch office in Croatia, a Registration Certificate from the Register of Foreign Organizations with the Croatian Ministry of Justice will be required, along with a list of signatures of authorized persons.

In line with the Amended Conditions under which Aliens May Acquire Funds in Domestic Currency (Official Gazette No. 14/96), as well as the Decision on Withdrawing Cash from Foreign Exchange Accounts Owned by Foreign Entities (Official Gazette No. 28/97), all foreign non-profit organizations not having a registered branch office in Croatia shall have limited access to financial resources held on non-resident accounts in terms of depositing and withdrawing cash.

Pursuant to the obligation under the Law on the Prevention of Money Laundering (Official Gazette No. 69/97), deposits of funds in excess of Kn 105,000 (US$ 15,000) on non-resident accounts of foreign non-profit organizations shall be registered with the Office for the Prevention of Money Laundering on the basis of data submitted by the banks with which such non-resident accounts have been opened.

The Office for the Prevention of Money Laundering has analytical mechanisms for identification of transactions which depart from usual business activities, including those of domestic and foreign non-profit organizations. In a new Law on the Prevention of Money Laundering, which is in the parliamentary procedure, this activity will be additionally specified. Pursuant to the new Law on the Prevention of Money Laundering and its bye-laws, identifiers (developed according to eight recommendations of the Financial Action Task Force, the *FATF Recommendations*) focused on the suppression of financing terrorism will be sent to the banks to facilitate identification of dubious transactions of domestic and foreign non-profit organizations. If a bank identifies a dubious transaction, it is obliged to notify such a transaction to the Office for the Prevention of Money Laundering, which in turn must notify the Public Attorney's Office.

1.4 Subpara. 1 (c) requires States to freeze without delay not only the funds and other financial assets or economic resources of persons committing/attempting terrorist acts, but also the funds of persons and entities acting on behalf of, or upon the directions of terrorists. Croatia's supplementary report states that a criminal act needs to be attempted or carried out in order to freeze the financial means. How does Croatia propose to deal with the situation when the funds are suspected of being linked to terrorism, but no terrorist act has yet been committed or attempted?

Pursuant to the provisions of the Law on Criminal Procedure and the Law on the Office for Combating Corruption and Organized Crime (USKOK), the court, prior to initiating an investigation or prior to initiating the proceedings to confiscate material profit, may pass a decision on temporary seizure of financial means under articles 218, 219 of the Law on Criminal Procedure, as well as in the course of the proceedings to ensure the forcible confiscation of funds, income or assets acquired through terrorist acts under art. 44, etc. of the Law on USKOK and the provisions regarding suspicious monetary transactions under art. 39, para. 1 of the Law on USKOK.

1.5 For effective implementation of subparas. 2 (d) and (e), States need to criminalize the use of their country for the purpose of financing, planning and facilitating terrorist acts outside their country against another State or its citizens.The legal provisions in Croatia's Criminal Code do not appear to meet this requirement adequately. Please comment on what actions the Republic of Croatia intends to take in this regard.

Under the provisions of the Croatian Criminal Code (Article 14), punishment is also envisaged of perpetrators who have committed criminal acts outside the territory of the Republic of Croatia. Following the amendments to the Criminal Code in the manner indicated under 1.2 above, association with the intention of commiting terrorist acts, financing and other preparatory actions preceding the commitment of a terrorist act will also be punishable, and the persons providing subsequent assistance to perpetrators of these acts will be sanctioned. Thus, criminal proceedings can be conducted against any person who inside or outside Croatian territory commits a criminal act with terrorist elements, which the Republic of Croatia is obliged to sanction under the provisions of international law. Hence, the Criminal Code and the criminal proceeedings apply likewise to a Croatian national or an alien who inside or outside Croatian territory commits a terrorist act.

1.6 As para. 3 calls upon all States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, what is the intention of the Republic of Croatia in regard to becoming a party to those conventions to which it is not yet a party?

On 22 November 2002, the Croatian Parliament ratified the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime.

The procedure of ratifying the UN Convention for the Suppression of the Financing of Terrorism is under way.

1.7 Please provide a progress report on the enactment of the Asylum Act and drafting of the Law on International Legal Assistance in Criminal Matters.

The Asylum Bill is currently in its second parliamentary reading. The Croatian Parliament is expected to adopt the Bill in the course of 2003.

The Law on International Legal Assistance with the Execution of International Treaties in Criminal Matters is being drafted.